

# HOUSE BILL REPORT

## 2SSB 5890

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### As Passed House - Amended:

April 17, 2003

**Title:** An act relating to a pilot project by the department of labor and industries to determine the feasibility and benefits for medical monitoring of agricultural workers.

**Brief Description:** Initiating a pilot project to determine the feasibility and benefits for medical monitoring of agricultural workers.

**Sponsors:** By Senate Committee on Ways & Means (originally sponsored by Senators Swecker, Rasmussen and Parlette).

### Brief History:

#### Committee Activity:

Commerce & Labor: 4/3/03 [DPA].

#### Floor Activity:

Passed House - Amended: 4/17/03, 98-0.

### Brief Summary of Second Substitute Bill (As Amended by House)

- Expresses the Legislature's in tracking the Department of Labor and Industries' rulemaking process for cholinesterase monitoring.
- Requires the Department and stakeholders to report to legislative committees on the rulemaking process.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Assistant Ranking Minority Member; Hudgins and McCoy.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Crouse, Holmquist and Kenney.

**Staff:** Jill Reinmuth (786-7134).

## **Background:**

Exposure to certain pesticides is known to inhibit levels of cholinesterase, a blood enzyme essential to the proper functioning of the nervous system. Blood tests of certain employees are considered to be an acceptable method for determining the extent and effects of exposure to these pesticides.

In 1986, and again in 1991, farm workers engaged in mixing, loading, and applying pesticides ask the Department of Labor and Industries (Department) to adopt a mandatory blood testing program to monitor their cholinesterase levels.

In 1993 the Department adopted rules recommending voluntary cholinesterase monitoring and mandating personal protective equipment. In 1995, after the farm workers informed the Department that they intend to seek judicial review, the Department established a Technical Advisory Group (TAG) "to assist the Department ... in determining an appropriate response" and "to identify the essential components of a successful monitoring program in Washington State."

The TAG report described cholinesterase monitoring as "the most well developed and feasible method among available worker monitoring approaches for cholinesterase-inhibitor exposure." It recommended cholinesterase monitoring on a voluntary basis for those working in occupations involved with handling cholinesterase-inhibiting pesticides within the specific trigger levels described in this document. It did not advise mandatory cholinesterase monitoring programs "given the current limitations of various resources vital for the implementation of some of the recommendations described in this document."

In 1997 the farm workers asked the Department to state its intent to adopt mandatory monitoring. The farm workers then filed a class action lawsuit against the Department. The farm workers argued that, when the Department decided not to adopt rules requiring mandatory cholinesterase monitoring for pesticide handlers, the Department violated its statutory duty to promulgate safety and health standards on exposure to toxic materials under the Washington Industrial Safety and Health Act (WISHA).

In 2002 the state Supreme Court issued its decision in Rios v. Department of Labor and Industries. The Court found that the Department's denial of the farm workers request to adopt rules on mandatory cholinesterase monitoring was "unreasonable and taken without regard to the attending factors or circumstances." The Court concluded that the farm workers met their burden of showing that the Department's denial of their 1997 request for rule-making was unreasonable, and ordered the Department "to initiate rule-making on a mandatory cholinesterase monitoring program for agricultural pesticide handlers."

### **Summary of Amended Bill:**

The Legislature expresses its interest in tracking the rule making process for mandatory medical monitoring. The Department of Labor and Industries and stakeholders representing agricultural employers and employees must report to the House Commerce and Labor Committee and the Senate Agriculture Committee on the rule making process by September 1, 2003, and by December 1, 2003.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Workers do this type of work because this is what they want to do. In the 1970s they applied hot chemicals without personal protective equipment. Now the industry does not use hot organophosphates. When workers are poisoned, the symptoms appear almost immediately; there is no doubt as to whether or not workers have been poisoned. Workers know the dangers and accept the risks. Personal protective equipment and common sense make the risks acceptable. Over the past 20 years, my company has had only two workers' compensation claims and neither one involved pesticide exposure. These blood tests are not wanted by some workers. These blood tests will increase the cost of doing business with little or no effect on safety. Instead of mandating blood tests, there should be a pilot project.

The agricultural industry is looking for a fair broker and the collection of data to determine whether or not a rule would be just and beneficial before such a rule is adopted. The Department of Labor and Industries (Department) did not mandate testing because the data did not support testing. There are serious technical problems (e.g., false positives). The Department has said it will model Washington's rule on California's rule. But there are problems with California's rule. It is not really enforced. Some bureaucrats admit that they "just made [some of the standards] up." The labs are not really certified; they just say that they do testing and have quality control programs in place. The tests are costly; they are estimated to cost more than \$1,000 per employee. Two baseline tests are needed because cholinesterase levels can fluctuate up to 23 percent for reasons other than pesticide exposure. The Department cannot show that routine cholinesterase testing will prevent illnesses and result in cost-savings. The Department of Agriculture supports a pilot project.

Farmers want to protect workers. They want to do what is most beneficial. They need a system that is based on real data, not anecdotes.

**Testimony Against:** Farmworkers are the backbone of the agricultural industry in Washington. These workers are in the fields and applying pesticides as part of their daily life. The classic symptoms of pesticide exposure include loss of memory, inability to concentrate, and nervousness.

Since 1996 the workers at Chateau St. Michele have had a contract, which has included a cholinesterase monitoring program. Before the workers begin mixing and spraying pesticides they do a test. A clinic from Pasco comes and takes samples. Later there is another test. Thanks to the exam, people with depressed levels are taken off of pesticide mixing and spraying and assigned other work until their levels stabilize. The sprayers are content with the exam. It works well for them.

Sprayers at other ranches do not have the same protection, which is why rule-making needs to go forward. Farmworkers do not oppose evaluating the program, but want the testing to begin.

Some workers are burned by chemicals. One friend became very sick from working with chemicals and died. The farmers don't care. One foreman refused to give workers protective equipment. Workers are not told about the dangers of pesticides. Personal protective equipment does not work effectively.

This bill would deny regular medical monitoring for workers who spray pesticides. The testing program would be very targeted. The goal would be to detect overexposure as soon as possible so that workers do not suffer long-term effects. In California cholinesterase monitoring has been used since 1974. It does not cost \$1,000 per worker. One in four monitored workers has been overexposed. California workers have greater protections than Washington workers. They not only have personal protective equipment, but also closed systems.

This bill is an attempt to undo the a Supreme Court decision. Washington farmworkers have been seeking cholinesterase monitoring since 1986. They have had a pilot program of sorts (voluntary monitoring) since 1993. The Supreme Court found that the Department's failure to require mandatory monitoring was arbitrary and in violation of WISHA. The Supreme Court ordered the Department to initiate rule-making on mandatory monitoring.

This bill would violate the state and federal constitutions. The State Constitution requires worker protection. WISHA implements this constitutional provision. It requires cholinesterase monitoring because it can be done and because it reduces the risks of exposure. It does not require that standards be based on perfect knowledge, only the best available knowledge. The federal and state constitutions also mandate equal protection under the law. By singling out farmworkers, it would also violate the equal protection clauses.

Rule-making should be allowed to proceed without interference. Mandatory cholinesterase monitoring should begin.

**Testified:** (In support) Dan Fazio, Washington State Farm Bureau; Tom Dent, Washington Aerial Applicators Association; and Charlie Brown, Washington State Potato Commission.

(Opposed) Guadalupe Gamboa, United Farmworkers; Pastor Mejia; Julio Lopez, Jr.; Todd True, Earth Justice; and Jeff Johnson, Washington State Labor Council.